

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, \* Docket No. 10-CR-307

v.

Buffalo, New York  
December 16, 2011  
1:01 p.m.

ANTHONY GALEA,

Defendant.

\* \* \* \* \*

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: PAUL J. CAMPANA, ESQ.  
Assistant United States Attorney

For the Defendant: MARK J. MAHONEY, ESQ. and  
BRIAN H. GREENSPAN, ESQ.

Court Reporter: YVONNE M. GARRISON, RPR  
Official Court Reporter  
U.S.D.C., W.D.N.Y.  
2 Niagara Square  
Buffalo, New York 14202  
716-861-7568

1 THE CLERK: Criminal Action 2010-307A, United States  
2 versus Anthony Galea, sentencing.

3 Counsel, please state your name and the party you  
4 represent for the record.

5 MR. CAMPANA: Paul Campana for the United States.

6 MR. MAHONEY: Judge, Mark Mahoney for Dr. Galea, and  
7 also --

8 MR. GREENSPAN: Brian Greenspan for Dr. Galea as  
9 well.

10 THE COURT: All right. Mr. Greenspan, I guess we  
11 admitted him the last time we were here.

12 MR. MAHONEY: Yes, Judge, he's been admitted.

13 THE COURT: Are we ready?

14 MR. CAMPANA: We are.

15 THE COURT: Mr. Mahoney?

16 MR. MAHONEY: Yes.

17 THE COURT: The defendant, Anthony Galea, stands  
18 before the Court for a sentencing on his previous plea of  
19 guilty to one count of introducing misbranded drugs into  
20 interstate commerce with intent to mislead an agency of the  
21 United States in violation of Title 21 United States Code  
22 Section 331(a) and 331(a)(2).

23 I know that counsel have reviewed the report, and I  
24 assume you've gone over it with your client, Mr. Mahoney.

25 MR. MAHONEY: Yes, Judge.

1           THE COURT: The Court hereby accepts the terms and  
2 conditions of the plea agreement and the plea of guilty. I  
3 will now place the presentence investigation report in the  
4 record under seal.

5           If an appeal is filed, counsel on appeal will be  
6 permitted access to the sealed report, except that counsel on  
7 appeal will not be permitted access to the recommendation  
8 section.

9           The parties have filed the appropriate statement of  
10 parties with respect to sentencing factors. I have carefully  
11 reviewed both the parties' statements with respect to  
12 sentencing factors, and have carefully considered both the  
13 parties' submissions, additional facts and circumstances that  
14 have been presented for the Court's consideration.

15           There is -- the parties do have some disagreement as  
16 to what the Court should consider and the weight that the Court  
17 should give to various circumstances in imposing a sentence.  
18 And I find that they are quite different, put in a different  
19 light by the government as well as the defendant.

20           On the one hand, the defendant contests the absence  
21 of much allegedly mitigating information in the presentence  
22 report; and on the other hand the government alleges the  
23 defendant is affirmatively misleading the Court by downplaying  
24 the seriousness of the offense of conviction. The government  
25 does stop short of asking the Court to declare the defendant is

1 in breech of the plea agreement. The Court has some concerns  
2 as well, and despite the highly extraordinary volume of  
3 submissions the parties have provided to the Court, I would  
4 like to address a couple of matters.

5 First, it is the propriety of the two-level upward  
6 adjustment for the obstruction of justice pursuant to Guideline  
7 Section 3C1.1. The parties have agreed that -- well, the  
8 parties have agreed in the plea agreement that the defendant  
9 made false statements to border officials and that he directly  
10 caused Ms. Catalano to make false statements to border  
11 officials to disrupt the border inspection process so that the  
12 drugs could be entered into the United States. But it's not  
13 clear to me that the facts establish about the false statements  
14 to obstruct the border inspection process will support the  
15 concrete and specific findings that the Court is required by  
16 law to make in order to justify the imposition of the sentence  
17 enhancement for obstruction of a criminal investigation  
18 pursuant to 3C1.1 of the guidelines.

19 Mr. Campana, I'm sure you agree with me that there is  
20 an element of criminal defense of dispensing misbranded drugs  
21 that the defendant has admitted that he acted with intent to  
22 defraud an agency of the United States. And the parties  
23 detailed in the factual basis paragraph of the plea agreement  
24 that you have then stressed in your presentence submissions  
25 evidence of a series of false statements that the defendant

1 made at the international border at the airport in Toronto and  
2 caused Ms. Catalano to make -- to make partly because of the  
3 evidence of conduct was necessary to prove beyond a reasonable  
4 doubt that the defendant acted with knowledge and the intent to  
5 deceive an agency of the United States.

6 In light of that, two those factors, first, if the  
7 false statement properly understood as evidence and intent to  
8 defraud an agency of the United States are proof of the  
9 underlying offense, were they not taken into account in the  
10 base offense level prescribed by the sentencing commission that  
11 applies to misbranding offense of conviction -- the offense of  
12 conviction.

13 Second, if you look at application note 5(B) to the  
14 guidelines Section 3C1.1, which lists among examples of types  
15 of conduct not ordinarily to be treated as obstruction for  
16 purposes of 3C1.1 in which it lists making false statements not  
17 under oath to law enforcement officers unless the statement  
18 obstructs or impedes the official investigation or prosecution  
19 of the instant offense.

20 Now, federal courts in applying the guidelines have  
21 imposed long sentences in federal prison upon drug smugglers  
22 convicted under Title 21 who did not receive this enhancement  
23 even though they made false statements at the international  
24 border.

25 The false statements here preview within the

1 heartland of the base offense level guideline in obstructing  
2 the border inspection process does not appear to be destruction  
3 of the criminal investigation in the instant offense.

4 Now, there's a two-level adjustment here for the  
5 obstruction of justice. I'd like an explanation on that.

6 MR. CAMPANA: Yes.

7 THE COURT: It appears to me that there's some issue  
8 here as to whether or not that's a proper adjustment.

9 MR. CAMPANA: Yes. It's being raised here for the  
10 first time. And what I would point out is that the plea --

11 THE COURT: We have many cases, Mr. Campana, where  
12 individuals come in the country carrying some kind of  
13 contraband and make a false statement at the border, yet I'm  
14 not aware of those false statements ever being used as an  
15 obstruction of justice adjustment.

16 MR. CAMPANA: Usually though, Judge, if I may  
17 respond, is that the plea is to a discrete, or in those  
18 circumstances, there's only one event and the person pleads  
19 guilty to that event and there's no other relevant conduct.

20 Here Count 3 charges this conduct on one day. It  
21 occurred on a single day as charged. However, the relevant  
22 conduct reaches back to a pattern of conduct over a couple of  
23 years where there's repeated misstatements and there's a  
24 conspiracy between Dr. Galea and Ms. Catalano.

25 THE COURT: That's not what he pleaded guilty to

1 here.

2 MR. CAMPANA: But he admitted it in his relevant  
3 conduct.

4 THE COURT: Okay.

5 MR. CAMPANA: And in the factual basis.

6 And because of that, or on account of that, the  
7 probation officer properly invoked the application note to  
8 reflect the obstruction that's implicit in those repeated  
9 events.

10 THE COURT: So you're saying it comes from the  
11 conspiracy that was admitted even though that wasn't the --

12 MR. CAMPANA: The plea wasn't to a conspiracy.

13 THE COURT: I'm sorry?

14 MR. CAMPANA: The plea was not to a conspiracy.

15 THE COURT: Right.

16 MR. CAMPANA: But the relevant conduct admitted shows  
17 a pattern of deception which the application note accounts for  
18 in which the probation officer properly cited in the report.

19 So this violation could occur --

20 THE COURT: Was it the repeated activity or was it  
21 the fact that he admitted to the conspiracy?

22 MR. CAMPANA: The obstruction is not based only upon  
23 one event. There would have been a sufficient basis to convict  
24 Dr. Galea if the only fact we had was the border crossing on  
25 that particular day. But, in fact, there was other relevant

1     conduct to which Dr. Galea admitted which was set forth in the  
2     factual basis. That represented a pattern of misleading,  
3     defrauding the government at the border, coming here under  
4     false pretenses, a way of committing this offense that is not  
5     typical, but which Dr. Galea admitted to. And on that basis,  
6     that application note was cited and properly, we think, to  
7     apply this adjustment.

8             It wasn't simply what happened at the border that  
9     day. It was a pattern of conduct that occurred from July at  
10    least of 2007, and persisted to September 14th, 2009.

11            THE COURT: Well, Mr. Mahoney, in your submission you  
12    made statements on behalf of your client that may put the  
13    acceptance of responsibility in doubt. You indicated in your  
14    statement at page 10 you say that it is noted Dr. Galea did not  
15    believe that there was anything wrong with bringing in the  
16    medicines involved in the case.

17            That statement could very easily be interpreted as a  
18    post plea denial of intent to deceive the element of the  
19    offense of conviction sufficient to deny him the two-level  
20    acceptance of responsibility adjustment. I'm a little  
21    concerned about that statement.

22            MR. MAHONEY: Well, Judge, there's a difference  
23    between the question of the medicines in themselves, that is  
24    whether or not, for example, Nutropin or Actovegin were  
25    permitted to come in the country. That would be inconsistent

1 with the mislabelling offense that's misbranding. And  
2 misbranding has nothing to do with the actual nature of the  
3 substance, but has to do with the labelling of it. So it  
4 really isn't part of the plea.

5 The plea doesn't really relate to the  
6 inadmissibility, if you will, of any of the medicines to come  
7 into the U.S. They have strictly to do with the labelling, but  
8 we put that in there not because it counters complete  
9 acceptance of responsibility for the offense he's pleading to  
10 and more -- clearly he agrees he did much more that was  
11 wrong -- we put that in there to sort of balance out the  
12 background concerns about some of the substances, specifically  
13 Nutropin as being associated with performance enhancement which  
14 categorically was not. And to try to put into context his  
15 belief based on, see, what was happening in the U.S. with the  
16 use of that medicine, that it would have been proper to bring  
17 the medicine in but that doesn't at all undercut the acceptance  
18 of responsibility for the labelling violation that occurred by  
19 bringing in medicine that has a label that does not conform to  
20 the regulations.

21 THE COURT: Mr. Campana.

22 MR. CAMPANA: Your Honor, I had been concerned with  
23 that issue too, but I note that first we did agree to -- to the  
24 mitigation. But in the more recent submissions I think  
25 Dr. Galea has himself taken responsibility especially in what

1 was filed yesterday, a letter personally from him to the Court.

2 We think that that, taken together with everything  
3 else, especially since he states his remorse for putting  
4 Ms. Catalano in harm's way, we think that in practical terms he  
5 has accepted responsibility, although I had been concerned with  
6 the earlier submissions that we believed and have said unduly  
7 minimized the conduct.

8 MR. MAHONEY: And, Judge, I would say probably will  
9 never do enough to try to draw the distinction between the  
10 arguments that counsel make regarding some of the finer points  
11 here and the underlying feelings about the defendant who has  
12 not only made his plea before Your Honor, has cooperated with  
13 the government, and he has expressed to us and in the letter --  
14 the letter he had sent to you -- we delivered to you -- really  
15 reflects what he's been saying all along. His real take is on  
16 this is, not necessarily reflected the in the lawyerly  
17 discussion about the finer points of what the implications are  
18 of the details behind this plea.

19 THE COURT: All right. I carefully read all the  
20 submissions of the parties and the presentence report and the  
21 Court will be adopting the facts in the report as its findings  
22 of fact and incorporate them in the record.

23 I know that you take issue with some of the  
24 statements that's in the record. Those submissions are part of  
25 the record. And if any further discussion, they're available,

1 but I'm not going to change the presentence report.

2           There are no objections to the probation officer's  
3 conclusions as to the applicable guidelines. The report  
4 recommends that the base offense level under Guideline  
5 Section 2N2.1(c)(1), and 2B1.1(a)(2) is 6.

6           The report also recommends a six-level upward  
7 adjustment pursuant to 2B1.1(b)(1)(D) as the payments for goods  
8 and services require government regulation but did not exceed  
9 \$30,000, but was less than \$70,000.

10           The report also recommends a two-level upward  
11 adjustment pursuant to 3B1.1(c), as the defendant was an  
12 organizer, leader, manager or supervisor in criminal activity.

13           The report also recommends a two-level upward  
14 adjustment pursuant to 3B1.3 as the defendant used a special  
15 skill in a manner that significantly facilitated the commission  
16 of the offense.

17           The report also recommends a two-level upward  
18 adjustment pursuant a 3C1.1 that he in -- the report recommends  
19 a two-level upward adjustment pursuant to 3C1.1 as the  
20 defendant willfully or impeded or attempted to obstruct, impede  
21 the administration of justice.

22           The Court will not impose the obstruction of justice  
23 enhancement in this case on the grounds that contrary to the  
24 government's position today, that the false statement was not  
25 made under oath, it was made to border inspectors, were not

1 made in the course of the official criminal investigation and  
2 did not obstruct the official criminal investigation.

3 The report also recommends a three-level downward  
4 adjustment for acceptance of responsibility. I will accept  
5 that and will calculate the offense level of 13, criminal  
6 history category I with an advisory range of 12 to 18 months.

7 However, the government has also filed a motion for a  
8 two-level departure under 5K1.1 for substantial assistance in  
9 the investigation and prosecution of others who may have  
10 committed offenses, and pursuant to 5K2.0 due to the  
11 defendant's waiver of extradition and voluntary surrender in  
12 the United States to enter into the plea agreement.

13 The Court will grant the request for the two-level  
14 downward departure pursuant -- as I just indicated. This puts  
15 us at offense level 11, criminal history category of I, with an  
16 advisory guideline range of eight to fourteen months. The  
17 advisory range for supervised release remains at one year. The  
18 advisory range for a fine is 2,000 to \$20,000, plus the cost of  
19 imprisonment and supervised release.

20 In accordance with the Supreme Court decision U.S.  
21 versus Booker and the Second Circuit decision U.S. versus  
22 Crosby, this Court must consider the guidelines but is not  
23 bound by them. The Court must also consider the factors set  
24 forth in 18 U.S.C. 3553(a).

25 Now, I have received, according to my count, it was

1 about 123 letters. I might add made my life last night quite  
2 late trying to go through all these letters, and I read every  
3 single one of them. I note that there was -- I didn't receive  
4 any letters -- I'm not saying there should have been any  
5 letters -- from any active professional athlete. I take this  
6 as not any sign of lack of support for the defendant, but I do  
7 conclude that it may reflect the desire to avoid potential  
8 controversy and notoriety. As I stated, I considered all the  
9 filings of the parties.

10 The letters -- I've been a judge for 23, 24 years and  
11 I receive letters, that number in the past, but I think that  
12 kind of really impressed me so much was the variety of the  
13 letters, who they came from: Peers, patients, every day  
14 patients, not the so-called -- I guess there's one hockey  
15 player that commented but most of the individuals just everyday  
16 citizens who just work very hard. They certainly are a  
17 testament to what this doctor has done over the years. It's  
18 unfortunate that he finds himself in this situation today, but  
19 he's got no one to blame but himself.

20 All right. Mr. Mahoney.

21 MR. MAHONEY: Thank you, Judge.

22 As you have anticipated, I'm sure, Mr. Greenspan and  
23 I are going to sort of split up our presentation. I just want  
24 to address in my own way the question of a non-guideline  
25 sentence and some of the factors that have build into that, and

1 then Mr. Greenspan will sort of address the area of which is  
2 more covered, say, in the letters from friends and family and  
3 patients and so on. I'll to be -- kept it very brief and I  
4 know he will as well. Although I've assured both him and  
5 Dr. Galea the Court makes it clear that it's not in a rush to  
6 get through this sort of thing.

7 And also, Your Honor --

8 THE COURT: You're not going to read the 123 letters.

9 MR. MAHONEY: No, no.

10 THE COURT: Thank you.

11 MR. MAHONEY: And, you know I, just want you to know  
12 that I was asked: Well, is the judge going to read all these  
13 letters; and based on my experience with you, I told him  
14 without any hesitation that you read every one of these letters  
15 and that you have commented more than once on how often you get  
16 useful and important information from these letters that help  
17 round out the picture of the person who appears before you.  
18 And I -- and I -- it's already evident that that's the case  
19 here.

20 I just wanted to, Judge, let you know who is -- there  
21 are a number of people here in the courtroom that I think it's  
22 helpful to the Court to know who is attending. To both of  
23 Tony's parents Joseph and Francis are here, his sister Janet,  
24 Janet Kermy (phonetic) is here, his nephews are here, his  
25 wife's father, Zorn Bovanovich (phonetic) is present, his

1 sister-in-law Nina Bovanovich is here.

2 Your Honor, you may recall -- I'm sure you recall a  
3 particular letter from Stacy Sharon from Atlanta, the woman  
4 who -- whose basically life was changed by Tony's efforts. She  
5 was disabled with chronic pain with conditions that other  
6 doctors were not able to help her with. And she tells the  
7 story, and what I think is probably the best letter I think  
8 I've ever seen submitted on behalf of a defendant about how he  
9 has changed her life.

10 She is here with her parents today from Atlanta,  
11 Judge. Mark McCoy is Tony's business partner. He was an  
12 Olympic gold medalist '92 Barcelona games. He was a patient,  
13 best friend. Jennifer Ruppel (phonetic) is a family friend.  
14 You mentioned the hockey player, Ty Domi is here in the  
15 courtroom today following up on his letter to the Court. Mark  
16 Lindsay (phonetic) who's a highly regarded, well-known  
17 chiropractor in the world of sports medicine is present. His  
18 good friend and patient came in, Damian Dodd (phonetic) is  
19 here, Jeff Dyer (phonetic) is a patient who flew in from Los  
20 Angeles to be here, Bess and Jacob Bauer (phonetic) two family  
21 friends, and John Chism (phonetic), and other patients.

22 And I just want you to know Mr. Greenspan reminded me  
23 today that they actually discouraged people from coming down to  
24 the courthouse today. This isn't a demonstration for Your  
25 Honor's benefit. It just was an indication that these are

1 people that are -- care very much.

2 Oh, I'm sorry, of course his wife Nella is present as  
3 well, Judge.

4 THE COURT: I note that his ex-wife actually wrote a  
5 letter too.

6 MR. MAHONEY: We could only hope, many of us do, that  
7 we would have that kind of support.

8 Well, I'll try to not extend things too much what I  
9 have to say. But, you know, in our presentation to you, Judge,  
10 we could have pretended that this is a simple case of  
11 misbranding and a 331 violation, and looked at it strictly that  
12 way.

13 And I think Mr. Campana is correct to point out it's  
14 a multifaceted case. There are a lot of issues behind it. The  
15 plea agreement is compromised in many ways. And there's --  
16 there is the larger picture that we tried to address. And some  
17 of that was because there was a lot of sensational and false  
18 media reports in connection with his arrest quite predictably  
19 given the kinds of patients that Dr. Galea has had which refer  
20 to things like performance enhancement and doping. And I just  
21 thought it important that we made it clear -- the government's  
22 also made it very clear that's not what this case is about,  
23 that's not what Dr. Galea has ever been about. He's been into  
24 exclusively on healing injuries for patients using the best and  
25 most advanced means.

1 THE COURT: Some of the drugs were enhancements,  
2 weren't they?

3 MR. MAHONEY: No.

4 THE COURT: They were used for healing purpose.

5 MR. MAHONEY: Absolutely.

6 THE COURT: But they were used in other, I guess --  
7 used in some other capacity. Somebody else may use them for a  
8 different purpose.

9 MR. MAHONEY: Exactly.

10 THE COURT: But there's no evidence that I saw that  
11 it was used in this case.

12 MR. MAHONEY: No. And the government's never  
13 suggested it, and I think they made it clear, as we do.

14 THE COURT: Well, the letters and again, I'm not  
15 going to speak on your behalf, Mr. Mahoney, it seems like his  
16 main goal as a physician is to be a healer.

17 MR. MAHONEY: That's his dedication, Judge.

18 THE COURT: I think I've seen that word countless  
19 times in all those letters from various people.

20 I'm sorry. I didn't mean to interrupt you.

21 MR. MAHONEY: No, that's fine.

22 And one comment I should make, we avoided naming  
23 particular patients for the -- generally for the most part  
24 because there are privacy concerns in terms of him revealing  
25 treatments to patients. So that's one of the reasons why we

1 don't really have a -- you know, identified individual patients  
2 and the treatments that they've had, but we went to some effort  
3 to outline for you what kind of treatments really are at issue  
4 here and maybe in detail. I'm certainly not going to go over  
5 now but just try to inform you of what all this was about.

6 But obviously this is a case that involves sort of an  
7 extreme kind of contrast. You know, we have a person about  
8 whom so many positive things can be said and have been said,  
9 who is a truly good person, a truly outstanding physician, and  
10 we have all the support in the world for that and he has his  
11 own record and his achievements for individual patients to  
12 attest to that. But in the midst of this, to contrast with  
13 that, we have somebody who partly because of it, because of his  
14 dedication to his patients and his single-mindedness in that  
15 regard made some terrible choices which he not only regrets but  
16 he's acknowledged were wrong about which he's very embarrassed  
17 today.

18 And, luckily, none of this was consequential for him.  
19 Nobody was hurt, nobody was intended to be hurt, people were  
20 healed, good things were done. But in order to do that, he  
21 disregarded very important and significant rules, not just at  
22 the border, but rules in terms of what substances and  
23 treatments are permitted and licensing requirements for  
24 physicians.

25 And what began as, I think, an innocent, although

1 partly maybe more naive effort, to accommodate some patients  
2 who weren't able to travel to Canada, almost all of his  
3 patients were established patients at his clinic in Toronto,  
4 but there were occasions where, for various reasons, patients  
5 asked him to come to see them here in the United States, and it  
6 became a slippery slope for him.

7           He made efforts to try to figure out the licensing  
8 requirements, and actually it's fairly simple in one sense. A  
9 physician from Canada is entirely permitted in every state to  
10 provide treatment to somebody in the United States whether  
11 they're a preexisting patient or not, if they work under the  
12 supervision of a physician licensed in that state.

13           And there were initially efforts to comply with that,  
14 but it became something that just did not fit the urgency, the  
15 traveling schedule, and he was not exiguous -- was not exiguous  
16 about it and was careless. He made efforts to actually get  
17 licensed in the United States in Colorado and people were  
18 helping him with that. It didn't happen quickly enough.

19           He made efforts to get associated with a clinic in  
20 the U.S. and, you know, on paper that was happening, but it  
21 didn't happen quickly enough. He made efforts to get a visa, a  
22 proper visa, which he'd be eligible for, clearly an O-1 visa  
23 where he'd be able to come into the country for the specific  
24 purpose of providing these kind of medical treatments, but  
25 he -- his activities, though, took him beyond that and it was

1 something which I think essentially got out of hand. He was  
2 unable to say no to patients because he knew he could help them  
3 and others couldn't. And experienced, I think, an increasing  
4 anxiety over the fact that he was not in compliance with these  
5 rules and was giving into his need to take care of these  
6 patients.

7 THE COURT: Well, he considered himself above the  
8 law, Mr. Mahoney?

9 MR. MAHONEY: I think -- obviously that's an easy way  
10 to characterize this. I think it was more of an naivety,  
11 Judge, with an arrogance that he felt his mission was -- it was  
12 so important to him, and healing was so important to him that,  
13 you know, on -- it may be on the same scale, you know, we're  
14 familiar with people crossing the border and being -- saying  
15 they're going to the mall because they don't want to say that  
16 they're going to the strip club. This is quite a different  
17 kind of thing. But I think it's more on that level than  
18 somebody who felt he was above the law because in many -- which  
19 is maybe why I put in our sentencing memorandum some of the  
20 finer points about why he would have thought that Nutropin was  
21 permissible, these treatments were permissible in U.S.; not to  
22 quibble but to say, yes, there's this aspect of acting above  
23 the law, but I don't think it was an arrogance. I think it was  
24 a -- a subduing those concerns to -- in giving preference to or  
25 giving focus on the immediate problem of a patient who was in

1 some need where they couldn't come to Toronto and needed his  
2 assistance, and putting it aside -- the concern aside about the  
3 regulations.

4 I can't argue too much with -- acting above the law.  
5 He certainly acted that way. But I think in trying to  
6 understand the mentality, I think it's merely that the  
7 situation got out of hand.

8 THE COURT: Well, he made quite a large number of  
9 trips.

10 MR. MAHONEY: I know it got -- that's what I mean by  
11 saying it was a slippery slope. He got started on this and was  
12 not -- and he should have -- he knows now how not only foolish  
13 it was, how wrong it was, and he has agonized over this, Judge,  
14 not just because of the trouble it's caused him, but because he  
15 realizes it doesn't even -- it's not even consistent with his  
16 own moral code, it's not professional, and it's the hugest  
17 embarrassment to him.

18 It's difficult -- it's very difficult. You know,  
19 he's acknowledging this publicly. It's a very difficult thing.  
20 But from the very outset in my first meetings with him, it's  
21 been evident to me that it weighed on him heavily that he made  
22 such bad choices. And he, of course, with good intentions  
23 rather than the legal intentions, but he realizes fully that  
24 that's just not an excuse, doesn't justify what he did, and  
25 he's embarrassed to the extreme.

1           THE COURT: And he brought another person involved  
2 here.

3           MR. MAHONEY: Yes, Judge. And I have to say, you  
4 know, from the very outset also, this is the first sort of  
5 public forum for this, but he knew this and it weighed on him  
6 heavily.

7           THE COURT: I was waiting to see whether there was  
8 going to be any acknowledgment on what harm he caused that  
9 young lady who is his assistant who's now a felon under the  
10 laws of the United States. And she appeared in front of me. I  
11 gave her one year probation. She appeared to be about as sweet  
12 of a person as you can ever imagine. And this obviously has  
13 changed her life dramatically. And she had so much confidence  
14 and trust in the doctor that she did what she was told, and now  
15 she's got to live with the felony conviction of the laws of the  
16 United States which is just terrible that woman is now  
17 suffering under that conviction. She can't come to the United  
18 States without permission. And it's just -- and her whole life  
19 has changed dramatically. I don't know what she's doing today.

20           And I -- when I saw that letter last night, that came  
21 in I guess late yesterday afternoon, because nothing  
22 acknowledged that, nothing -- and I was a little surprised, and  
23 when I got that last night I thought it was a factor that was  
24 important to me because of all the damage he did to that young  
25 woman.

1           MR. MAHONEY: I can tell you, Judge, that from my  
2 very first meetings with Tony, it was clear that this was  
3 something which he has never -- he has never complained to  
4 either me or Brian about all the things -- we talk about the  
5 things he's gone through. He's never complained about it. He  
6 understands he's brought this on himself, but he is -- but  
7 this -- and I can see that that's the most heartfelt paragraph  
8 in that letter, and I think that is a concern that has been at  
9 the forefront from the very beginning.

10           THE COURT: Mr. Mahoney, how can you get -- obviously  
11 your client is a renowned physician. He's done great work.  
12 He's brilliant. I think someone indicated that he's in the top  
13 one percent in his field. I wish someone would you say that I  
14 was in the top one percent of all the judges in the United  
15 States but that's not going to happen. But it just -- I  
16 just -- a man who was so brilliant and the statements that were  
17 made how sensitive he is, he's a role model, he's a healer,  
18 high moral character, treated his patients, everyday citizens  
19 like they were -- and he had such care for them; he had such a  
20 concern about their well-being. I think a little bit more  
21 beyond the average physician today.

22           It's kind of unusual reading some of that. And I was  
23 reading it from everyday citizens that I said, from his  
24 colleagues. I mean, his colleagues that wrote on his behalf  
25 are -- couldn't be more complimentary. He was a gold standard.

1 Deeply spiritual. What was he thinking to find himself in  
2 violating the laws of the United States? I mean, the FDA has  
3 these restrictions as to what can come into the country, and I  
4 know you take issue with some of that in your submissions, but  
5 the FDA has a very important job in caring for the welfare of  
6 the citizens of this country that quack doctors or quacks --  
7 quack doctors -- people that -- medicine men or whatever don't  
8 bring their great stuff that it does more harm. It's an  
9 unbelievable task that the FDA has with so many new substances  
10 and things coming out today that I'm sure they're burdened very  
11 heavily in trying to deal with all these new substances that  
12 are being created every day.

13 But I know that you somewhat take issue with some of  
14 these substances really are accepted and all that, but it's  
15 against the law of the United States, and until the law changes  
16 that's the law. And we do live in a country where we have to  
17 abide by the laws, whether you're a citizen of the country or  
18 whether you're an outsider who comes into our country; the same  
19 as if we go to a foreign country, we would have to abide by the  
20 laws of those countries. And you looking around the world  
21 there are many cultures that have, I think, some things that we  
22 obviously would not accept as Americans, but that's their  
23 culture and we can't change it unless they change it.

24 So the idea that here's this brilliant physician who  
25 was apparently made inroads into this area of pain control that

1 done so much that we just run this risk. Look at the  
2 embarrassment he's caused himself, his family, all the -- he's  
3 been on many panels and many different -- all these different  
4 professions he's been accepted very well.

5 To some degree now he's being rejected. And  
6 certainly he's suffering more. And I just can't imagine how he  
7 put himself in this position. It's just mind boggling to me  
8 that someone with this gift would not take the extra steps to  
9 make sure that he is compliant with the laws of a different  
10 country.

11 MR. MAHONEY: Judge, I think there's no easy answer  
12 to that, but for me the answer, having known Dr. Galea for two  
13 years now, I think the answer is that what causes that  
14 understanding from people about his dedication to healing and  
15 what has produced the results that he has seen for his patients  
16 is the single minded deal on behalf of the patients. And that  
17 when it came up that patients needed him here in the U.S., they  
18 couldn't come to Toronto, I think he just pushed other concerns  
19 to the side.

20 And he realized -- you know, again, it was not evil,  
21 it wasn't a plan. He didn't start out with a plan to violate  
22 the laws or do anything unlawful. The plan was to help the  
23 patient, and he was cognizant of the need to comply with the  
24 rules and made some efforts that were not complete and not  
25 thorough.

1 I don't think that's to say it's not an easy  
2 explanation, but the very zeal and dedication of the patient  
3 that results in these letters to you, and this I think correct  
4 understanding you have of his persona, was what -- was maybe  
5 the flaw that allowed him to put these concerns aside where  
6 other people that were less dedicated, less intensely focussed  
7 on the patient would have put these concerns more to the  
8 forefront. But it's the same thing that results in him not  
9 charging a lot of patients for --

10 THE COURT: Well, I noticed in a lot of the letters  
11 that he was more concerned with the patients than to earn a  
12 fee.

13 MR. MAHONEY: Yeah.

14 THE COURT: It seemed to be not a dry word. That's  
15 what I'm saying is here's a man who's like -- almost like, I  
16 guess when I go back in my life I think about Marcus Welby who  
17 used to be a TV doctor that you always looked up to. I don't  
18 know if we have many of those today. The profession, the  
19 medical profession has changed dramatically in my lifetime.  
20 And yet you've got a man who reminded me to some degree in  
21 reading all this, reading the reports and all the submissions  
22 that somebody has a very unusual quality.

23 MR. MAHONEY: I actually on one visit up to  
24 Dr. Galea's clinic there were two physicians there, one a  
25 father; one's from Niagara Falls. He's been a rheumatologist

1 for about 35 years there, and his son who practices in Chicago.  
2 After hearing a five-minute conversation with Dr. Galea at a  
3 recent presentation or symposium, they closed down the  
4 practices for two days and came to Toronto to watch Dr. Galea.  
5 And the father mentioned to me that in ten minutes with  
6 Dr. Galea he learned like 20 things that he -- in 35 years he  
7 had not learned as a rheumatologist. And the significance of  
8 that, to me, was not only with how other physicians regarded  
9 him, but that what he is doing is relevant, not just to sports  
10 medicine but the areas like treating arthritis and other  
11 conditions that affect the joints.

12 So I agree with everything you said, Judge. There's  
13 no simple answer to it. It's the kind of, I think his  
14 single-minded zeal for his patients and maybe a naivety which  
15 he certainly shed at this point.

16 He's been through it, he gets it, he understands now,  
17 and he's not just remorseful because of the impact it has had  
18 on him and could have on him, but because of the effect on --  
19 you know, what will his patients do if he can't take care of  
20 them, what will his family do. And, again, what has also been  
21 a major concern situation, as you pointed out, of the position  
22 he put Mary Anne Catalano in. And I know that that's the thing  
23 for which he is most embarrassed and most remorseful about as  
24 he stands before you today.

25 I guess the final thing I wanted to address, Judge,

1 is very simply, because I think it's -- it's quite obvious that  
2 the -- the sentencing guideline setup here under Section 331 of  
3 Title 21 covers a broad range of conduct, and it would cover  
4 the quack doctors, it would cover people bringing in unsafe  
5 medicines, it would cover bringing in the huckster of steroids  
6 selling them to adolescents to help build muscles in the gym.  
7 It would cover those kinds of individuals. And that's -- the  
8 guideline range we end up with here with all its enhancements  
9 is a guideline range that is suitable for that kind of person.  
10 And it does not take into account, and I think I can say with  
11 confidence --

12 THE COURT: Well, that type of person you're  
13 describing, maybe a guideline of above the guideline range  
14 would be appropriate.

15 MR. MAHONEY: But they have the same guideline range  
16 even if you sentenced them above it. So my point is as a  
17 starting point -- the sentencing guideline range in this case  
18 doesn't really take into account the dramatic contrast between  
19 that core behavior that's of concern which includes -- the  
20 guideline range includes not just misbranding but also  
21 adulteration, meaning drugs are supposed to be sterile which  
22 are not drugs, are supposed to be from legitimate  
23 pharmaceutical sources which are not, and on and on and on.

24 And certainly doesn't contemplate the physician who  
25 takes widely accepted homeopathic medications using them to

1 treat injuries successfully that others could not do. And I  
2 think it just -- that certainly was -- is probably not what the  
3 congress had in mind the 331 and certainly not with the  
4 guidelines commission had in adopting the guideline range for  
5 that. There's no adjustments up or down based upon how, you  
6 know, good the product is or what, you know, it's being used  
7 for accepted medical purpose. The guidelines just don't --  
8 don't take into account those things.

9 So I think that for especially a first time offender,  
10 under these circumstances, we have a guideline range of  
11 starting out, sets a range which is, in my view, clearly  
12 greater than necessary in cases which could fall within  
13 Section 331.

14 THE COURT: Mr. Campana disagrees with you.

15 MR. MAHONEY: Well, I think, in my view, the  
16 government also always takes the position in every case  
17 where there's a plea agreement that the sentencing guideline  
18 range -- a sentence within the guideline range is appropriate.  
19 I haven't seen the government deviate from that in any case --

20 THE COURT: Well, they have. I've had cases.

21 MR. MAHONEY: Well --

22 THE COURT: You have never seen it, but I have.

23 MR. MAHONEY: I'm just unlucky in that regard, I  
24 guess, but maybe it's me. But I think that it's -- it's no  
25 surprise to me the government's saying, you know, it's -- the

1 guidelines sentence is appropriate. And -- but I point out  
2 that when the government did take that position in their  
3 response to our objections, it was without regard without at  
4 all taking into account all of the mitigating factors in the  
5 case, at least not expressly so; perhaps it was. But I think  
6 that, you know, the reality of it is, I think that when we  
7 strike a deal with the government, a plea agreement, I always  
8 expect the government to say that they -- they believe that a  
9 guideline sentence is appropriate even though they've allowed  
10 the defendant to argue for a non-guideline sentence below the  
11 range, just as they preserve for themselves an opportunity to  
12 argue for a sentence above the guidelines range. So I just  
13 think it's appropriate to point that out.

14 And, Your Honor, I think that obviously our papers  
15 outline for you what you already know and can easily tell.  
16 There's been a great deal of punishment exacted already on  
17 Dr. Galea even if the forfeiture in this case was a civil  
18 forfeiture. In technical terms, forfeiture is a traditional  
19 punishment. He has his license at risk, his reputation is  
20 extremely damaged, he's lost career opportunities.

21 And so you've already mentioned, alluded to the  
22 consequences of incarceration here for his employees, for his  
23 patients. I do believe that what we've said in our sentencing  
24 memorandum that a sentence of commitment would be greater than  
25 necessary to achieve the legitimate purpose of the sentencing

1 here. And I think that even in the context of general  
2 deterrence, there aren't many other people like Dr. Anthony  
3 Galea contemplating coming across the border to treat patients  
4 in U.S. for the -- for the positive reasons that he did that we  
5 have to worry about here in terms of deterring. And I think  
6 that this case is a case unique case. I haven't seen a case  
7 like this.

8 I would ask Your Honor to also note though as a more  
9 technical point, that given the range -- the new range that we  
10 have, this is a range where a lot of times the Court would  
11 figure out a sentence which would allow confinement to be home  
12 confinement, for example, in this range. And, in fact, that's  
13 just not available because he's a Canadian citizen. There are  
14 options that are not open to the Court in terms of sentencing  
15 because of the fact that he's not a U.S. resident and citizen.

16 So I certainly would request that the Court -- in my  
17 view, a sentence of -- without incarceration is a sentence  
18 which also would not require supervision which I think  
19 typically does not occur with Canadian defendants, but I point  
20 out that as long as Dr. Galea is under any kind of supervision,  
21 it will effectively prevent him from taking the steps -- the  
22 initial steps toward trying to get -- seek permission, official  
23 permission, to enter the U.S. for authorized purposes.

24 So that the longer that there's any period of  
25 supervision, even if it's unsupervised probation, that will

1 delay his ability to seek permission to enter the U.S. and seek  
2 status in the U.S. and so on.

3 Just a personal story, Judge, if I may, before I turn  
4 it over to Brian. Your Honor may know I'm a cyclist. I do a  
5 lot of bike riding a couple of times --

6 THE COURT: You're a kayaker too.

7 MR. MAHONEY: Yes, Judge.

8 THE COURT: See you --

9 MR. MAHONEY: It's my job, Judge, to intrude on other  
10 people.

11 So we've done some bike riding together. He's a very  
12 good cyclist, and we were out riding in September, and there  
13 was a huge ride of riders coming in the opposite direction.  
14 And what it was there was a woman whose husband was an Ontario  
15 Provincial Police officer who's was on a bicycle and struck by  
16 a motorist and killed. And she began a local chapter in  
17 Ontario of -- a program called "Share the Road" which is  
18 basically to increase awareness about bicycle safety and have  
19 vehicles be aware of cyclists.

20 And this particular event involved police officers  
21 participating in a ride. And there were, I would say about 200  
22 police officers for the Ontario Provincial Police on this ride.  
23 And they jerseys show the different -- that they were police  
24 officers and so on.

25 So we were -- we stopped at an intersection. There

1     were about three or four of us. And this ride goes by -- and  
2     now bear in mind the way you're cycling you have sunglasses on,  
3     and a helmet, and you have, you know cycling clothing on. It's  
4     not that easy to recognize somebody. But as they're going by,  
5     I would say about 20 percent of the police officers on their  
6     bicycles were shouting out Dr. G, Tony, Dr. Galea. And I said,  
7     Tony, what's up with all these cops that are saying hi to you.  
8     And he basically -- he treats -- when police officers come in  
9     and they're not covered by whatever, he treats them for free.  
10    He's treated a lot of these people.

11                 THE COURT: We got letters from them. There were  
12    some letters there.

13                 MR. MAHONEY: Yeah. I mean, I was blown away by  
14    this, Judge. And, again, you can imagine, not many of my  
15    clients get that kind of treatment from police officers. But  
16    it so typifies what you remarked on earlier, that the  
17    perception of people they have of him it's genuine, it's deep  
18    and it has to do with the kind of person that he really is.

19                 And I've got to say that I, like so many people, feel  
20    very fortunate to have the opportunity to meet him, and I think  
21    that come through in all the letters.

22                 So, Your Honor, if I may permit Brian Greenspan to  
23    address you at this point and then perhaps if at that point if  
24    Mr. Campana has something to say, perhaps we could hear and a  
25    chance, if we need to, to respond to something he says and

1 allow Dr. Galea to go at that point. I don't know if that  
2 would --

3 THE COURT: Well, the defense will go first.

4 MR. GREENSPAN: Thank you, Mark.

5 First of all, Your Honor, I'd like to express my  
6 appreciation for the opportunity to address you. It's a  
7 privilege for which we're grateful.

8 The personal perspective is someone who grew up  
9 17 miles downstream on the Canadian side of Niagara. I was  
10 always influenced greatly by Buffalo by listening to Chuck  
11 Healy on the broadcast from Buffalo and coming back from the  
12 stadium to watch the Bisons. But as many people of my  
13 generation, we were most influenced by our view of America by  
14 something that was said by President Kennedy when he addressed  
15 the Canadian Parliament in 1961 in terms of the relationship  
16 which our countries shared. President Kennedy said: The  
17 geography of its neighbors history that made us friends,  
18 economics that made us partners, and necessity has made us  
19 allies; what unites us is far greater than what divides us.  
20 Indeed, what's basically fundamental by our legal cultures is  
21 our principles of fundamental justice is decremented (phonetic)  
22 in decisions; what unites us is far greater than what divides  
23 us.

24 Yet when I address you on behalf Dr. Galea, I do so  
25 with some trepidation, for I do so with both greatest respect

1 for Your Honor and for the courts of the United States and for  
2 the system of justice of the United States, but I also do so as  
3 a Canadian lawyer with a Canadian perspective.

4 Last weekend Justice Morris Fish of the Supreme  
5 Court -- of the Supreme Court of Canada spoke in Toronto to the  
6 Criminal Lawyers Association annual convention. And he's one  
7 of Canada's most distinguished jurists and criminal lawyers who  
8 was on the Court of Appeals of Quebec and one of the most  
9 distinguished members of the criminal bar of Quebec before his  
10 elevation to the Supreme Court happened.

11 He devoted a significant portion of his remarks to  
12 what he said were the most fundamental policies and principles  
13 of sentencing in Canada. And he talked about the concept, the  
14 age-old concept of lex talionis and said that lex talionis  
15 really meant proportionality tempered by restraint. And  
16 proportionality tailored with not only to the specific  
17 circumstances of the offense, by taking into account the  
18 oftentimes unique characteristics, feelings and contributions  
19 of the offender.

20 And as far as I can understand, Your Honor, very much  
21 the concept of a sentence in the United States that is no  
22 greater than necessary, which I understand to be a fundamental  
23 principle of sentencing in this country.

24 I want to very briefly discuss with you -- and very  
25 brief -- because quite frankly my task has been significantly

1 reduced by what is clear, and as Your Honor has expressed, your  
2 very, very clear understanding of all the letters, the  
3 sentiments expressed, high praise for not only his talent, his  
4 dedication, but his focus on the healing arts as being so  
5 fundamental to his person. But he is a person that's made a  
6 major contribution, not only to the health and welfare of his  
7 community, but he's someone who in the world known in the  
8 Canadian world of sports medicine but the world's world of  
9 sports medicine is really continued to make a significant  
10 contribution on so many levels.

11 In the materials that Mr. Mahoney filed on behalf of  
12 Dr. Galea, there is a section near the end that reviews these  
13 letters of support and occasionally quotes from them. And in  
14 many ways it's mentally representative of those sentiments. As  
15 you expressed, many of his colleagues viewing him as being  
16 among the one or two top -- one or two percent of the top of  
17 his profession were the most sought after experts by  
18 physicians, athletes, patients around the world. And that  
19 international reputation is not only shared by physicians in  
20 Canada in the United States, but a whole host of physicians as  
21 you saw where he's made such an important contribution in the  
22 state of Israel to injured soldiers and people who have had  
23 significant injuries.

24 As well as what's perhaps of significance is that  
25 people have been prepared to come forward. And I want to make

1 it clear we decided quite intentionally not to seek out the  
2 athletes and the well-known celebrities who he has treated and  
3 assisted in their rehabilitation over the years. We  
4 intentionally didn't seek out those people. And, in fact, we  
5 rarely solicited these letters. These letters -- most of these  
6 letters at least were letters from the heart from people who  
7 volunteered. And indeed to this day our office receives on a  
8 continuing basis, almost a daily basis, the offers of  
9 assistance, the offers of letters, the offers of support from a  
10 wide variety of people in the Toronto and in the Canadian  
11 community.

12 Team coaches and sports owners and indeed you saw  
13 that former owner of the Toronto Argonauts, the Canadian  
14 football league said that of Dr. Galea: I can honestly say  
15 I've never met a more compassionate, dedicated, intelligent,  
16 loyal and authentic individual in all my life. And as you  
17 probably noted, that same owner dedicated a very impressive  
18 sculpture at the Sheba Medical Center in Tel Hashomer, Israel  
19 in honor of Dr. Galea. This is the type of person who really  
20 in terms of his compassion, his dedication, his devotion to his  
21 profession and to his patients really is in many ways a  
22 Canadian treasure.

23 In this country, people of real significance, people  
24 who themselves are great Americans as you saw from  
25 Bestor (phonetic) Young, retired Rear Admiral Carey who from

1 the heart advised Your Honor, advised the public, advised  
2 whoever is prepared to read that this is -- and I'm quoting per  
3 Admiral Carey -- a man truly of exceptional character, a person  
4 who, through expansive charitable work and giving back to  
5 society is almost without equal. Calls him a patriot. I'm not  
6 sure of what country. I think perhaps a patriot of the world.  
7 And he's a patriot with commitment to his faith and religion  
8 and father caring for his seven children.

9 THE COURT: Why is there so much adverse publicity?  
10 Why was this case received a lot of unflattering reporting?

11 MR. GREENSPAN: In my view, and I say this with  
12 respect to the fifth estate, and that is that what occurred  
13 from the outset was the desire to explode this case into a case  
14 of the misuse of drugs. It wasn't understood properly. It was  
15 thought to be a case of performance enhancement. And  
16 performance enhancement is always been defined as bigger,  
17 stronger, faster. And this case has nothing to do with bigger,  
18 faster or stronger. It is only something to do --

19 THE COURT: Do you have any evidence to support that  
20 otherwise, what he's just saying?

21 MR. CAMPANA: No, Your Honor. We never took the  
22 position, and we don't, that Dr. Galea's intent was to make  
23 athletes bigger, faster and stronger.

24 THE COURT: I've read nothing that would suggest that  
25 and that's why I was -- I asked the question why did this

1 receive such widespread unflattering reporting.

2 MR. GREENSPAN: And, Your Honor, regrettably when  
3 reads that unflattering reporting, the inference to be drawn  
4 from it was that in some way Dr. Galea was engaged in conduct  
5 in which he categorically was not engaged in.

6 So that it's a misrepresentation of the type of  
7 activities in which he engaged his --- not only his intent, his  
8 actual acts and actions were always the person presented with  
9 an injury, that was first and foremost the premise of what  
10 occurred.

11 He presented with an injury, he presented with a  
12 deficiency, and it was an attempt to address that injury or  
13 deficiency from a solid and sound medical perspective. That  
14 was his only intent and the only expectation of the athletes  
15 that he dealt with. If you take a look at some of the  
16 publicity --

17 THE COURT: These treatments did receive -- there  
18 were some controversy as far as the treatments are concerned.

19 MR. GREENSPAN: Well, this is --

20 THE COURT: I mean, there is some within the medical  
21 profession.

22 MR. GREENSPAN: There is a debate about the efficacy  
23 of some of the treatments. And indeed, let me be very candid,  
24 five years ago when Dr. Galea was at the cutting edge of PRP  
25 treatments, platelet rich plasma treatments, there was

1 controversy about PRP. There was a controversy particularly in  
2 America about the use of PRP. Now, it's standard practice.

3 Every major league baseball player who has a rotator  
4 cuff injury goes to American physicians who in their clinics  
5 are utilizing PRP in a widespread basis. Some of whom, five  
6 years ago, were critical of Dr. Galea who then was at the  
7 cutting edge of PRP and one of the first promoters and pioneers  
8 of its use.

9 That's why the Steadman Clinic wanted him. That's  
10 what the Steadman Clinic was talking about in terms of being  
11 the leader in the area of regeneration and in terms of muscle  
12 and tendon injuries.

13 So that that type of leading and current research and  
14 leading edge is what Dr. Galea's always been the best. He's  
15 pushed the envelope in terms of thinking and in terms of new  
16 research, but it's always sound and has only one objective, the  
17 art of healing, and that's really his life's work and the  
18 dedication that he's demonstrated throughout his life.

19 At the same time, and I don't want to in any way  
20 suggest in any way that Dr. Galea shins from the acceptance of  
21 his responsibility for the offense, his shame, his regret,  
22 sincere remorse, and I -- Your Honor's read the letter that he  
23 provided. That letter, again, as Mr. Mahoney has said, he  
24 expressed it privately countless times and now publicly and I  
25 think quite insightfully in the letter to Your Honor, he

1 expresses his remorse, regret and shame.

2 Mr. Mahoney has talked about some of the collateral  
3 damage, the risk to his licensing, the fact that he's already  
4 sustained some significant damage to his reputation, the  
5 removal from various associations, the suspension in his  
6 teaching role in many areas that hopefully will be restored in  
7 the very near future.

8 And I needn't read excerpts, but I do think that and  
9 it's the belated -- the one letter that was received as Your  
10 Honor pointed out from one professional athlete, a retired  
11 professional athlete, who's present in Court, Ty Domi. And one  
12 of the interesting aspects of Mr. Domi's very thorough and  
13 articulate and insightful letter, he talks about Dr. Galea as a  
14 brilliant physician, the medical innovator, one of the most  
15 caring, compassionate and dedicated individuals I know. He's  
16 someone who said that he was in a privileged position and  
17 privileged life as a professional athlete. He met many  
18 extraordinary medical specialists, and Dr. Galea perhaps the  
19 best.

20 He says while he appreciates the serious nature of  
21 the charges against Dr. Galea, I also urge you to take into  
22 account Dr. Galea's track record of compassion, of his service  
23 to his patients, and the impact that charges against him have  
24 had on this gentle man and his family.

25 And it led me to think about, and I've occasionally

1 in my career reverted to -- not a reliance on but an analogy to  
2 the Judeo Christian concept of the book of life and debits and  
3 credits in one's life, and almost like a lecture in some ways.  
4 And Dr. Galea at no point in his life had ever thought that  
5 he'd have to call upon the credits.

6 The credits in his life were heartfelt, they were  
7 sincere, they were part of who he is, and yet he built up that  
8 wealth of credit that his life's work has provided and the  
9 caring that he's had throughout his life has given to him.

10 And I say with great respect that at some time, and  
11 it's only right and proper that, you know, imposing a sentence  
12 no greater than necessary, that the credit side in mitigation  
13 is exhausted, is fully exhausted. Anthony Galea will never  
14 again have to utilize the credit side of the ledger. It's time  
15 to utilize it in my respectful submission to Your Honor in  
16 mitigation of the sentence, and we ask that a non-custodial  
17 sentence be imposed.

18 Thank you for your consideration, sir.

19 THE COURT: Mr. Galea, this is your opportunity, sir,  
20 to say anything you'd like to say.

21 THE DEFENDANT: First I want to apologize to the  
22 United States of America for violating the laws and  
23 regulations. I want to apologize to the government; the FDA  
24 for violating its rules and regulations; to the FBI for causing  
25 so much grief in the investigation; to the Department of

1 Homeland Security for violating their trust in me coming  
2 across.

3 I would also like to apologize to Mary Anne Catalano  
4 and her family for the turmoil I caused them, but specifically  
5 I want to apologize to her mom and dad and her grandfather who  
6 entrusted her well-being to my hands and I blew it. And I'll  
7 never forgive myself for that.

8 I'd like to apologize to my wife and family and  
9 friends for my overzealousness in trying to heal the pain in  
10 others and their injuries. I caused a lot of suffering and  
11 pain in the ones I love, and that's tough. And that's it, Your  
12 Honor.

13 THE COURT: Mr. Campana.

14 MR. CAMPANA: Thank you, Judge.

15 A minute ago the Court asked about the government's  
16 view concerning the issue of performance enhancement. And  
17 there are two halves to that answer. One is we don't allege  
18 that Dr. Galea intended to enhance the performance of his  
19 patients when they were athletes to make them bigger, faster  
20 and stronger, but he did know that at least one of the  
21 treatments that was given involved a substance that was banned  
22 by the sports leagues they played in.

23 So in addition to putting Ms. Catalano in a very  
24 difficult position, he did put these athletes in a position  
25 where they were out of compliance with the rules of the sports

1 they played, and we regard that as a serious thing too.

2 But generally, Judge, what we had here is a case --  
3 and just to review the facts without a lot of detail.

4 Dr. Galea started coming here for one purpose and then  
5 continued to do it on a large scale, numerous times. And the  
6 Court referred to the mission of the FDA as being a very  
7 important job, an awesome task were the mission of the FDA is  
8 to ensure the health and safety of people who live in the  
9 United States. And the Food, Drug and Cosmetic Act is designed  
10 to make sure that medications are safe, and there's rules and  
11 regulations for that.

12 But there's another agency, and Dr. Galea mentioned  
13 this, and that's Homeland Security. They have a mission too.  
14 And their mission is to be sure that inspecting everyone who  
15 enters the United States enters for a lawful purpose. And  
16 Dr. Galea undermined that purpose as well as the purpose of the  
17 FDA on many times, many occasions; more than 150.

18 And Dr. Galea indeed is a -- is a skilled physician.  
19 But it's not enough to do things well. It's necessary that  
20 they be done lawfully. And we have laws that are designed to  
21 ensure that.

22 For that reason, Your Honor, we ask the Court to  
23 impose the sentence within the guideline range you found,  
24 because we think that would be the sentence that would ensure  
25 respect for the law and to ensure that there isn't undue

1 disparity.

2 Thank you.

3 THE COURT: Well, you say undue disparity,  
4 Mr. Campana, there's a lot of factors that have to be taken  
5 into consideration; the 3553 factors. So there's -- it's  
6 unwarranted disparity, a disparity that seems to shock one's  
7 conscious and that's what the sentencing commission has  
8 considered it.

9 I'm going to ask you a tough question: Why do you  
10 feel that justice would be better served to put him in prison  
11 for, let's say, a year?

12 What would that accomplish in the -- in the interest  
13 of justice, why is the United States serve -- what would the  
14 United States benefit by that? Here you have a man, and I'm  
15 not suggesting what I'm going to do right now, okay, but here  
16 you have a man -- and you've got all those letters, I'm sure.

17 MR. CAMPANA: I did.

18 THE COURT: Okay. It wasn't an easy task. And  
19 believe me, it wasn't, but there was -- I didn't see anything  
20 at all anywhere in the report to disagree with anything that  
21 was said in those letters.

22 Now, there's one thing about the legal aspects of it,  
23 you know, you violated the law, there's no question about it.  
24 And those laws are very, very important for all of us that they  
25 enforce and people abide by them. But on the other hand,

1 you've got to look at the 3553 factors. And have you ever seen  
2 a case, ever seen a case ever in your career, Mr. Campana, that  
3 there were more 3553 factors for the Court to consider other  
4 than here?

5 Because I -- and I have had more cases that you've  
6 had and I do this every day and I sentence every day. I can't  
7 recall a case that has more 3553 factors.

8 Now, certainly the fact that he brought that young  
9 woman involved in this thing, the fact that he violated the  
10 law, those factors certainly have to be carefully considered.  
11 And they are important -- there's no question about it -- in  
12 the administration of justice, but the 3553 factors have to be  
13 considered too. And when you consider them, they're pretty  
14 strong on this case, in my opinion. They seem to be  
15 overwhelming. And it was just -- it was the whole range of  
16 where these letters came from. That's what kind of really  
17 impressed me. And there was a constant theme here, and that is  
18 that he was -- devoted his life to healing. Not to performance  
19 enhancements, not to do anything other than to practice  
20 medicine to the best of his ability. And some individuals  
21 indicated he's like the top of his field.

22 So what is to be gained if he were to serve, let's  
23 say, a year in prison?

24 A deterrent factor?

25 MR. CAMPANA: Yes, that; and respect for the law.

1           THE COURT: Deterrence is an absolutely  
2     overwhelming -- let me tell you something. When I first got  
3     this report -- well, I'll tell you in a little while -- you  
4     know, this is, from reading everything, and you have to almost  
5     live in a cave not to be aware. There's been a lot of  
6     publicity in this case, and it's been painted many reports very  
7     different than from the reports that I read here in this court  
8     proceeding.

9           So tell me why you think that a period of  
10    incarceration would serve the general good? Why would it serve  
11    the interest of the United States? And I know deterrence is  
12    important, but you have a lot of factors here. You've got  
13    factors of, you know, someone commits a crime, there's a degree  
14    of accountability that varies. Someone who robs a bank who  
15    really probably didn't do much in his life, obviously he'll go  
16    to prison, but there's not a lot of collateral damage. Not as  
17    much at least from a man who was -- is well-recognized in the  
18    community as being on the cutting edge of the medical  
19    profession.

20           I interrupted you.

21           MR. CAMPANA: Yes.

22           THE COURT: I know --

23           MR. CAMPANA: No, I appreciate the question.

24           THE COURT: But I do -- deterrence is a driving force  
25    here for me, let me tell you.

1 MR. CAMPANA: Judge, this isn't either for the  
2 government and for the Court.

3 THE COURT: No, this is not an easy case for me,  
4 Mr. Campana.

5 MR. CAMPANA: I was going to say -- I was going to  
6 say it's not a ground ball.

7 THE COURT: It's not an easy case for anybody.

8 MR. CAMPANA: It is not a ground ball or a routine  
9 pop fly or anything of the sort, but there's two aspects that  
10 can be looked at here. Today was an occasion for the defense  
11 to talk about the defendant, Dr. Galea, because the Court has  
12 to sentence a man. And part of what the Court does is sentence  
13 a man for who he is and who he's been, but I want the Court to  
14 be mindful, as I know it will be, to be conscious also of the  
15 offense, and I would just remind the Court, in case it needs  
16 reminding, and it I'm sure it doesn't --

17 THE COURT: I think your position is that --

18 MR. CAMPANA: This was serious.

19 THE COURT: -- challenging Mr. Mahoney on some of the  
20 issues that he raised were irrelevant, and I basically in some  
21 degree I agree with you on that.

22 MR. CAMPANA: The repeated -- the repeated conduct  
23 and putting others in jeopardy including some of the patients.  
24 As long as the Court's sentence is mindful of those two things,  
25 what the offense conduct was, I understand the Court's need

1 also to account for the man Dr. Galea has been represented to  
2 be.

3 THE COURT: Let me go over some of those 3553  
4 factors, and this is the controlling issue for the Court to  
5 always consider. Factors to be considered in imposing  
6 sentence: The Court shall impose a sentence sufficient but not  
7 greater than necessary to comply with the purposes set forth in  
8 paragraph 2; the nature and circumstances of the offense; and  
9 the history and characteristics of the defendant; the need for  
10 the sentence to be imposed to reflect the seriousness of the  
11 offense and promote respect for the law; and provide just  
12 punishment for the offense before adequate deterrence to the  
13 criminal conduct; to protect the public from further crimes of  
14 the defendant; provide the defendant with needed educational or  
15 vocational training, medical care or other correctional  
16 treatment in the most effective manner. Those are the factors.

17 MR. CAMPANA: We don't think he needs the medical  
18 care, and the last, but the two --

19 THE COURT: You have to protect him from the public.

20 MR. CAMPANA: The two most important things, Your  
21 Honor, are deterrence and respect for the law.

22 THE COURT: I agree with that.

23 MR. CAMPANA: And it is naturally the case, I  
24 believe.

25 THE COURT: Any question at all about the

1 remorsefulness here, challenge --

2 MR. CAMPANA: Up until yesterday, yes, Your Honor,  
3 but when we received that -- we received the letters from  
4 yesterday, especially Dr. Galea's letter --

5 THE COURT: Well, he had -- there was a first letter  
6 that he wrote. This was the second letter.

7 MR. CAMPANA: That was published or that was filed  
8 yesterday.

9 THE COURT: There was another letter though in the --  
10 letter number one, I believe.

11 MR. CAMPANA: That was --

12 THE COURT: Am I right on that?

13 MR. CAMPANA: That was filed yesterday.

14 THE COURT: Yeah. Oh, no, I'm sorry.

15 MR. MAHONEY: I don't believe so, Judge.

16 THE COURT: There was so many letters.

17 MR. CAMPANA: Yesterday was the first time that we  
18 heard that he regretted placing --

19 THE COURT: I was waiting to see that because the  
20 young woman was in here.

21 MR. CAMPANA: We waited for that too.

22 THE COURT: And I don't know whether -- I believe it  
23 was a sincere statement. I have no reason to believe  
24 otherwise.

25 Anything further?

1 MR. CAMPANA: No.

2 THE COURT: I need a break. We've been going an hour  
3 and 20 minutes. Let's take a 15-minute break. The Court will  
4 be in recess.

5 (A recess was taken at 2:20 p.m.)

6 THE COURT: Are we ready?

7 MR. CAMPANA: We are.

8 THE COURT: Pursuant to the Sentencing Reform Act of  
9 1984, it's the judgement of the Court that the defendant is  
10 hereby committed to the custody of the Bureau of Prisons to be  
11 in prison for a period of time served.

12 The cost of incarceration fee is waived.

13 He shall be placed on supervised release for a period  
14 of one year. While on supervised release, he shall not commit  
15 another federal, state or local crime; shall be prohibited from  
16 possessing a firearm or other dangerous device. In addition,  
17 he shall not possess a controlled substance. Shall comply with  
18 the standard conditions adopted by the Court.

19 Since the defendant is a Canadian citizen and will  
20 return to Canada, he shall not reenter or attempt to reenter  
21 the United States without written authorization of the  
22 Secretary of Homeland Security. Reentry into the United States  
23 without approval of the Secretary of Homeland Security will  
24 constitute new criminal conduct which may subject the defendant  
25 to criminal prosecution. Reentry without approval during the

1 term of supervision will be considered a violation of the  
2 conditions of supervised release.

3 Because he is a resident of the city of -- citizen of  
4 Canada, the term of supervised release shall be unsupervised.

5 In view of the fact that there is a 275,000 civil  
6 forfeiture that he has already paid, as I understand it.

7 MR. CAMPANA: Yes.

8 MR. MAHONEY: Yes.

9 THE COURT: Okay. The Court does not feel that an  
10 additional fine is warranted. The Court will waive the fine.

11 However, I will order the mandatory special  
12 assessment of \$100 which is due immediately. I would suggest  
13 that he make that payment today.

14 MR. MAHONEY: Yes, Judge.

15 THE COURT: In determining the sentence, the Court  
16 has considered the advisory guideline range and the points  
17 raised by the counsel for the defendant -- the defendant and  
18 the government as to what the appropriate sentence should be.

19 In addition, I have considered the factors set forth  
20 in 18 U.S.C. 3553(a) and finds the sentence imposed is  
21 sufficient, but not greater than necessary to comply with the  
22 purpose of sentencing set forth in 18 U.S.C. 3553(a).

23 I have sentenced to a non-guideline sentence to time  
24 served. The Court notes that during the period set forth in  
25 the indictment, even though he only pleaded to Count 3, that

1 this whole activity took place from February, 2007, to  
2 September, 2009, he was a citizen and a resident of Canada and  
3 was a physician licensed to practice medicine in the Province  
4 of Ontario. He was not licensed to practice medicine in the  
5 United States.

6 He continues to operate a medical business practice  
7 today in Canada known as the Institute of Sports Medicine  
8 Health and Wellness Center. During the relevant time period  
9 Ms. Catalano was employed by the defendant and worked as his  
10 assistant.

11 I note that he is a lifelong resident of the Province  
12 of Ontario. He's raised with a very supportive and loving  
13 environment where athletics and education were encouraged.  
14 He's been married on two occasions and has seven children  
15 ranging from the age of three to twenty-two. He's obviously  
16 well-educated and no prior record; no history of substance  
17 abuse.

18 He appears to be a soft-spoken, humble man as  
19 evidenced by the extensive letters of support. Appears to be a  
20 well-respected and well-liked member of the medical profession,  
21 and certainly is respected by the number of patients that he  
22 has treated over the years.

23 There's no question that he embarked on a career of  
24 sports medicine striving to be on the cutting edge of treating  
25 injuries related to patients' muscles, tendons and joints

1 without the need for surgical procedures over the course of his  
2 career. There's no question he sought to educate himself or  
3 treat patients utilizing at the time unconventional methods in  
4 an effort to provide better medical care for patients.

5 I conclude from reading the materials that his travel  
6 to Israel to practice there for a time was motivated in part  
7 for a desire to enhance his skills and learn different  
8 techniques for patients. He has reportedly treated thousands  
9 of patients for various athletic ability injuries, provided  
10 consultation for professional sports teams and treatment.  
11 Appears to have led other professional athletes to experience a  
12 myriad of injuries to seek out his services.

13 While the -- his legal inability to practice medicine  
14 in the United States is a pertinent part of the facts involved  
15 in this case, the reality is that he's pleaded guilty to  
16 bringing misbranded drugs into the United States. He's  
17 acknowledged that. He realizes that he should have been more  
18 truthful with both the intent of entering the United States in  
19 a manner in which he used to treat his athletes.

20 There's no question he's paying a huge price for his  
21 misdeeds. He has been portrayed in the media as a performance  
22 enhancing physician, although there's no evidence that I have  
23 seen, or the government's presented to me that that's true.

24 His practice has a -- as I understand it, a practice  
25 that's still very viable. But there's no question he suffered

1 irreparable harm as a result of this conviction. The defendant  
2 appears to be -- have a genuine desire to be a healer, and  
3 apparently his focus on providing his current optimal treatment  
4 for his patients ultimately led to this consequence which he's  
5 here today.

6 I believe that the primary interest is and has been  
7 from healing injuries. However, he appears to have been  
8 impatient and reportedly sought some direction or made some  
9 attempts to obtain a visa and permission to work in this  
10 country. His choice put himself above the law, and to engage  
11 in conduct that has seriously tarnished his reputation,  
12 diminished his career and been very financially detrimental to  
13 himself and his family. He obviously has no one to blame but  
14 himself.

15 The Court finds that a period of incarceration would  
16 not outweigh the benefit of what he has to offer to his  
17 patients. He appears to be genuinely remorseful and contrite.

18 I was -- we talked earlier about Ms. Catalano and  
19 that letter that I received last night suggesting his true  
20 remorse as to what he caused her, and he indicated that in  
21 Court today, and I certainly have no reason to believe that.

22 I also was very impressed with the letters filed on  
23 his behalf. I don't remember ever in my career receiving such  
24 a cross-section of letters from so many people of saying such  
25 wonderful things about him which obviously had an impact on

1 this Court.

2 I know that there is a pending matter in Canada for  
3 conduct similar to here. I don't know exactly what that's  
4 going to result in but he's still -- he's going to have to deal  
5 with the Canadian laws. It's unlikely that he'll ever be able  
6 to practice law (sic) in this country and that whether he'll  
7 ever be able to be admitted to the United States is something  
8 that this Court has no jurisdiction in.

9 I note that he's paid this civil forfeiture of  
10 \$275,000 which was certainly a large amount of money, and  
11 apparently that was part of the plea agreement that he entered  
12 into.

13 The United States also agreed to dismiss the other  
14 four counts in the indictment, and obviously the Court thought  
15 that this was an important consideration, not only to require  
16 him to plead to the major count.

17 I am not imposing a fine. I believe the civil  
18 forfeiture is adequate compensatory payment for him to make.

19 Sir, you have a right to appeal this sentence if you  
20 feel the Court misapprehended its authority or it imposed an  
21 illegal sentence. However, you did waive your right to appeal.  
22 If you feel that waiver is not a valid waiver, you may take  
23 that issue up before the Second Circuit Court of Appeals.

24 Mr. Campana.

25 MR. CAMPANA: We ask that the open counts be

1 dismissed. Those would be 1 and 2, and 4 and 5.

2 THE COURT: Motion's granted.

3 Anything further, Mr. Mahoney?

4 MR. MAHONEY: No, Judge.

5 THE COURT: Mr. Campana, anything further?

6 MR. CAMPANA: No.

7 THE COURT: All right. The Court will be in recess.

8 MR. MAHONEY: Thank you very much, Your Honor.

9 (Proceedings concluded at 2:42 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct  
transcription of the proceedings stenographically recorded by  
me in this matter.

S/Yvonne M. Garrison, RPR

YVONNE M. GARRISON, RPR  
Official Reporter  
U.S.D.C., W.D.N.Y.